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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>SUSAN RIOS REYES,<br><br>Defendant and Appellant. | D048013<br><br><br><br>(Super. Ct. No. JCF15502) |

APPEAL from a judgment of the Superior Court of Imperial County, Raymond A. Cota, Judge. Affirmed.

Susan Rios Reyes appeals a judgment following her nolo contendere plea to charges of conspiracy to commit a crime (Pen. Code, § 182, subd. (a))[1] and possession of illegal substances in a jail facility (§ 4573.6). On appeal, she contends the trial court erred by denying her motion to traverse the affidavit in support of the search warrant, quash the warrant, and suppress evidence. She argues: (1) the affidavit in support of the

search warrant contained a material misstatement of fact made knowingly or in reckless disregard for the truth; (2) the triggering event of the anticipatory search warrant did not occur and therefore probable cause did not exist on the date of its execution; (3) the affidavit did not establish probable cause because it did not show a connection between her or her husband to the criminal activity of other persons; and (4) the good faith exception to the probable cause requirement does not apply.

FACTUAL AND PROCEDURAL BACKGROUND

On July 2, 2004, Henry Rosas, a correctional officer at the Centinela State Prison (Prison), signed a statement of probable cause (Affidavit) in support of a request for a search warrant. Rosas stated he was an investigator with the Prison's investigative services unit (ISU) and had experience with the manner in which staff and visitors deliver controlled substances to Prison inmates. He stated: "It is common for controlled substances to be introduced into the prison by placing controlled substances into body cavities to avoid detection." He also explained that because inmates are aware correctional officers monitor their communications, inmates use different code words to avoid detection when negotiating a transaction involving a controlled substance. During his two years with the ISU, he monitored outgoing inmate telephone calls and gained knowledge of inmates' jargon when referring to narcotics or other contraband.

In the Affidavit, Rosas stated:

> "The [ISU] is conducting an ongoing investigation on inmates CALDERON, M., T-98053, A4-233L, aka Speedy and ANTIMO,

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1 All statutory references are to the Penal Code.

> N., T-39832, AGYM-141L aka Negro. Based on various outgoing telephone calls, ISU has intercepted information utilizing the inmate Monitoring Automated Recording System. It was determined that Calderon has organized a conspiracy to introduce narcotics into the [Prison] with the assistance of his outside contacts and utilizing Antimo's approved visitor/wife, Susan Rios Reyes. This visit is planned for Saturday, July 3, 2004."

Rosas described the underlying investigation: "Calderon and Antimo have been the subjects of an [ongoing] investigation by ISU into possible drug trafficking on Facility 'A.' " At about 1:58 p.m. on July 2, 2004, Officer J. Velasco notified ISU that Calderon was using a telephone to call a number suspected to be his grandmother's residence. During the conversation, conducted in Spanish, a person named Sean told Calderon that his (Sean's) house was raided and "they took the STUFF." When Sean stated specifically that "The Heroin" was taken, Calderon asked, "The Parts?" (which ISU believes to be a code word for narcotics). Calderon seemed upset that the "parts" were taken. Sean stated that the "parts" were in a bag with a "hotdog" (which ISU suspects to be a code word for latex condoms, balloons, or other packaging for narcotics concealed within body cavities). Sean assured Calderon he would attempt to "get more." Calderon told Sean it cost him a thousand dollars. Calderon told Sean his (Calderon's) grandmother would loan Sean $700 to replace "the parts." He told Sean to go immediately to his grandmother's house and drive her to the bank. Calderon told Sean to "have the parts ready tonight . . . because she [apparently referring to Reyes] will be there tonight." Sean replied, "Yeah, I've already talked to Susan."

At about 2:44 p.m. on July 2, Calderon made another telephone call to the same number. His grandmother placed a three-way call to Sean (also known as Gordo).

Calderon left the following message for Sean: "Hey Gordo, just like I said man, you need to take care of all this fucken pedo [apparently referring to the transaction] today homie! Today, have everything, have all those parts . . . ready for that car . . . , that car [apparently referring to Reyes] has to go to the fucken races [apparently referring to the Prison] homie, I can't afford for that car not to go . . . ."

In the Affidavit, Rosas stated it was his conclusion inmates Calderon and Antimo were conspiring to bring narcotics into the Prison "during a planned visit through Antimo's approved visitor Susan Rios Reyes . . . ." Accordingly, he requested that a search warrant be issued to search Reyes, any persons accompanying her, and any vehicle in which she arrives on the Prison's grounds. In particular, he requested the warrant authorize a cavity search so the search could be executed before Reyes had a contact visit with Antimo. Rosas stated his belief, based on the amount of narcotics and method of packaging, that the narcotics "would be concealed in the vaginal or anal cavity of Ms. Rios Reyes to avoid visual detection." Rosas described his experience with concealment of narcotics in that fashion.

At 6:00 p.m. on July 2, Rosas subscribed and swore to the Affidavit before the magistrate (Judge Christopher W. Yeager), who found probable cause to issue, and then issued, a search warrant (Warrant). The Warrant authorized officers to search Reyes, any persons with whom she arrived on the Prison's grounds, and any vehicle in which Reyes may be riding. The search could include an unclothed visual and physical body cavity search and personal vehicle search. The purpose of the search was to find heroin, balloons, condoms, and other specified drugs and paraphernalia.

At about 2:00 p.m. on July 11, Reyes arrived at the Prison. Officers served the Warrant on her and informed her of their suspicion that she was attempting to bring a controlled substance into the Prison. Reyes denied the accusation and denied having any contraband on her, but agreed to submit to the search. During a search of her unclothed body, Reyes stated she had an unidentified item in her vagina. However, when the female officer asked Reyes to remove it, Reyes claimed she did not have it in her vagina, but rather it was in her car in a bag. No drugs were found during a subsequent search of her car. Reyes was then transported to a hospital where a physician removed from her vagina a large black hard substance wrapped in a latex condom material. The seized substance was 27.3 grams of heroin. Reyes told the officers her husband (Antimo) had arranged for Sean to provide her with the drugs and a car, and that she was to bring them into the Prison. Calderon's sister was to pay her $500 for the delivery.

On March 24, 2005, a grand jury indictment was filed against Reyes, Antimo, and Calderon, charging them with the offenses described above, in addition to other offenses. Reyes pleaded not guilty to the charges.

On September 29, Reyes filed a motion to traverse the Affidavit, quash the Warrant, and suppress the evidence seized pursuant to the Warrant. On October 27, the trial court denied the motion.

On December 2, Reyes withdrew her not guilty plea and pleaded nolo contendere to the charges of conspiracy to commit a crime (§ 182, subd. (a)) and possession of illegal

substances in a jail facility (§ 4573.6).[2] The court sentenced Reyes to the lower term of two years for the section 4573.6 conviction and a concurrent two-year term for the section 182, subdivision (a) conviction.[3]

Reyes timely filed a notice of appeal.

## DISCUSSION

### I

### *Affidavit's Purported False Statement Regarding Reyes's Status as an Approved Visitor*

Reyes contends the trial court erred by denying her suppression motion because the Affidavit Rosas signed on July 2, 2004, contained the material misstatement of fact, made knowingly or in reckless disregard for the truth, that Reyes was (or would be) an "approved" visitor of Antimo as of July 3. She argues that because her visitation rights were suspended on July 2, Rosas either knew, or should have known, at the time he signed the Affidavit that she was not (or would not be) an approved visitor at the time the Warrant was to be executed (i.e., on July 3). In any event, she argues because Rosas subsequently learned her visitation rights were suspended, he should have notified the magistrate before the Warrant was ultimately executed (i.e., on July 11). Finally, she argues the court should have at least conducted an evidentiary hearing under *Franks v. Delaware* (1978) 438 U.S. 154 (*Franks*).

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2 The court dismissed the other charges on the prosecution's motion.

3 The court stayed execution of her sentence pending the outcome of the instant appeal.

A

The Fourth Amendment of the United States Constitution generally requires that police obtain a warrant before conducting a search.[4] (*Franks, supra*, 438 U.S. at p. 164.) A defendant may move to suppress evidence seized pursuant to a warrant issued or obtained in violation of his or her constitutional rights. (§ 1538.5, subd. (a)(1)(B)(v).) Search warrants must be supported by sworn affidavits and issued only after a magistrate independently determines whether there is probable cause for the search. (*Franks*, at pp. 166-167; *People v. Luttenberger* (1990) 50 Cal.3d 1, 9.) A warrant affidavit is presumed valid. (*Franks*, at p. 171; *Luttenberger*, at p. 10; *People v. Costello* (1988) 204 Cal.App.3d 431, 440-441.) However, a defendant may challenge facts underlying the warrant affidavit by making "a specific and substantial primary showing that: 1) the affiant made statements which were deliberately false or in reckless disregard of the truth; and 2) the affidavit's remaining content, after the allegedly false or reckless statements have been set aside, is insufficient to justify a finding of probable cause." (*People v. Brown* (1989) 207 Cal.App.3d 1541, 1547.) Alternatively stated, a defendant must proffer evidence showing: (1) the affidavit includes a false statement or omission; (2) the false statement or omission was made deliberately or in reckless disregard for the

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4 The Fourth Amendment guarantees the right of people to be secure in their persons, houses, papers, and effects, and provides that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." The Fourth Amendment applies to the states through the Fourteenth Amendment's due process clause. (*People v. Alvarez* (1996) 14 Cal.4th 155, 182.)

truth; and (3) the false statement or omission is material (i.e., absent the false statement or omission, there would not have been probable cause for the search warrant). (*Franks*, at pp. 155-156; *People v. Bradford* (1997) 15 Cal.4th 1229, 1297; *Costello*, at p. 441.)

Conclusory allegations are insufficient to make that preliminary showing. (*People v. Luttenberger*, *supra*, 50 Cal.3d at p. 10; *Franks*, *supra*, 438 U.S. at p. 171.) *Franks* stated:

> "To mandate an evidentiary hearing, the challenger's attack must be more than conclusory and must be supported by more than a mere desire to cross-examine. There must be allegations of deliberate falsehood or of reckless disregard for the truth, and those allegations must be accompanied by an offer of proof. They should point out specifically the portion of the warrant affidavit that is claimed to be false; and they should be accompanied by a statement of supporting reasons. Affidavits or sworn or otherwise reliable statements of witnesses should be furnished, or their absence satisfactorily explained." (*Id.* at p. 171.)

If a defendant makes that preliminary showing, the trial court must hold a *Franks* evidentiary hearing to determine whether material false statements or omissions in the affidavit were made deliberately or in reckless disregard for the truth. (*Franks*, *supra*, 438 U.S. at pp. 155-156, 172.) At that hearing, the defendant has the burden to prove by a preponderance of the evidence that material false statements or omissions were made deliberately or in reckless disregard for the truth. (*Id*. at pp. 155-156; *People v. Bradford*, *supra*, 15 Cal.4th at p. 1297.) If the defendant satisfies that burden, the warrant is voided and the evidence seized pursuant to its execution is suppressed. (*Franks*, at pp. 155-156; *Bradford*, at p. 1297.)

On appeal, a trial court's decision whether a defendant has made the requisite preliminary showing for a *Franks* hearing is reviewed de novo. (*People v. Box* (1993) 14 Cal.App.4th 177, 183.) A trial court's factual findings after a *Franks* hearing are upheld if supported by substantial evidence. (*People v. Costello*, *supra*, 204 Cal.App.3d at p. 441.)

B

Reyes's argument is premised on a proffered interpretation of the Affidavit that we do not accept. She argues Rosas stated in the Affidavit that she was (or would be) an "approved" visitor at the Prison on July 3, the date on which the warrant purportedly was to be executed. However, a close reading of the Affidavit shows the adjective "approved" was used to *identify* the woman named "Susan" whom Calderon intended to use in his plan to smuggle drugs into the Prison. As quoted above, Rosas stated in the Affidavit:

> "Based on various outgoing telephone calls, ISU has intercepted information utilizing the inmate Monitoring Automated Recording System. It was determined that *Calderon has organized a conspiracy* to introduce narcotics into the [Prison] with the assistance of his outside contacts and *utilizing Antimo's approved visitor/wife, Susan Rios Reyes*. This visit is planned for Saturday, July 3, 2004."

Rosas did *not* state Reyes would be an approved visitor on July 3, but rather that it was Calderon's plan to use Reyes, Antimo's wife, who, at the time of Calderon's July 2 calls to

Sean, *was* an approved visitor (at least to the extent of Calderon's presumed knowledge).[5] Accordingly, we are not persuaded by Reyes's assertion that the Affidavit misstated she was, or would be, an approved visitor on July 3.

Assuming arguendo the Affidavit misstated that Reyes was an approved visitor at the time Rosas prepared or signed the Affidavit on July 2, we conclude there is no evidence showing Rosas knew at that time Reyes's visitation privileges had been suspended. In opposition to Reyes's motion, a declaration of Rosas was submitted, stating in part:

> "2. . . . All statements made in my affidavit of July 2, 2004, reflect the best of my understanding of the facts at the time I made said affidavit.
>
> "3. *Prior to completing said affidavit, I confirmed with visitor processing staff at [the Prison] that [Reyes] was an authorized visitor for [the Prison] inmate Norberto Antimo. At the time of preparing my affidavit, therefore, [Reyes] was an authorized visitor for inmate Antimo.*
>
> "4. I later learned from visitor processing staff that, following the [ISU] inquiry into the status of [Reyes] as an authorized visitor of inmate [Antimo], visitor processing staff ran a criminal history check through the California Law Enforcement Telecommunications System ('CLETS') on July 2, 2004. I am informed and believe that the July 2, 2004 criminal history check revealed to visitor processing staff that [Reyes] had a bench warrant issued against her for a failure to appear in Los Angeles County Superior Court and that, as a result,

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[5] Although the Affidavit contained a second use of the adjective "approved" in referring to Reyes, we conclude that it also was intended to describe the woman Calderon and Antimo planned to use to smuggle drugs into the Prison. The Affidavit stated: "Upon reviewing the aforementioned information, it is determined that inmates Calderon and Antimo are conspiring to introduce narcotics into the institution during a planned visit through Antimo's approved visitor Susan Rios Reyes . . . ."

> visitor processing staff suspended the visiting privileges of [Reyes] on that date.
>
> "5. *I did not learn of this suspension until after Judge Yeager issued the [Warrant]*." (Italics added.)

The assertion by Reyes that Rosas knew, or should have known, Reyes's visitation privileges had been suspended at the time he prepared or signed the Affidavit is unsupported by any evidence.[6] (*Franks, supra*, 438 U.S. at p. 171.)

Furthermore, although Reyes argues Rosas should have notified the magistrate before the Warrant was ultimately executed (i.e., on July 11) that she was no longer an approved visitor, there is no evidence showing that on or prior to July 11 he knew her visitation rights had been suspended. His declaration does not specify whether he learned of Reyes's suspension before or after execution of the Warrant on July 11. At most, his declaration supports the conclusion he knew of that suspension at some point in time after the Warrant was issued on July 2. Rosas's declaration neither states nor supports the conclusion he knew of that suspension before the Warrant was executed on July 11. Accordingly, we do not accept Reyes's assertion, based on Rosas's declaration, that "it is likely Rosas knew about the suspension prior to the execution and knew his statements in support of the warrant were no longer true."[7]

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[6] Reyes's declaration in support of her motion is insufficient to show otherwise. In her declaration she stated in part: "1. That I was informed and knew on the day of my arrest, July 11, 2004[,] that my visitation privileges had been suspended as of July 2, 2004."

[7] We need not decide whether Rosas had a duty to notify the magistrate about the suspension of Reyes's visitation privileges after the Warrant was issued.

Because Reyes has not made a sufficient proffer of evidence showing the Affidavit contained a false statement or omission regarding her status as an *approved* visitor, she cannot show Rosas made that purported misstatement either deliberately or with reckless disregard for its truth. Furthermore, she cannot show the purported misstatement was material (i.e., were it omitted, probable cause for the Warrant would not exist). Accordingly, she did not make a sufficient preliminary showing entitling her to a *Franks* evidentiary hearing.

In any event, in the circumstances of this case we doubt Reyes's visitation status was material to the existence of probable cause for the Warrant. A reasonable magistrate could conclude that even had the Affidavit stated Reyes's visitation privileges had been suspended, there was probable cause, based on Calderon's telephone calls to Sean and the ISU's investigation, to believe Reyes would attempt to deliver drugs to Antimo at the Prison (whether or not Reyes was aware her visitation privileges had been suspended). Therefore, it appears any purported misstatement regarding her approved visitor status was immaterial to the existence of probable cause for the Warrant. Furthermore, the declaration of correctional officer Yvonne Salazar refutes the credibility of Reyes's apparent contention that she (Reyes) would not, or could not, have attempted to deliver any drugs to Antimo because she knew her visitation privileges had been suspended. Salazar stated: "2. On July 11, 2004, shortly before 2:00 p.m., I was in the ISU squad room when I received a call from the visitor processing center. During this call, I was informed that [Reyes] . . . was at visitor processing demanding to see her husband, inmate Norberto Antimo. [¶] 3. I reported to visiting processing and met with [Reyes]. At the

time, [Reyes] appeared quite emotional and indicated to me and to visitor processing staff that she desired to see inmate Antimo, indicating specifically, 'I only need to see him for five minutes.' I distinctly remember [Reyes] using these words." The Warrant was then executed and 27.3 grams of heroin was found hidden on Reyes. Therefore, it appears Reyes did, in fact, attempt to deliver the drugs to Antimo (whether or not she was aware her visitation privileges had been suspended).

II

*Execution of Anticipatory Warrant on July 11, 2004*

Reyes contends that because the Warrant was an anticipatory warrant required to be executed on July 3, 2004, its subsequent execution on July 11 was invalid and evidence seized on that date must be suppressed.

A

A search warrant must be executed within 10 days after its issuance. (§ 1534, subd. (a).) "A warrant executed within the 10-day period shall be deemed to have been timely executed and no further showing of timeliness need be made. After the expiration of 10 days, the warrant, unless executed, is void." (§ 1534, subd. (a).) If a warrant is executed within 10 days after its issuance, the defendant has the burden to show probable cause did not exist at the time of its execution. (*People v. Cleland* (1990) 225 Cal.App.3d 388, 394; *People v. Hernandez* (1974) 43 Cal.App.3d 581, 590.)

"An anticipatory or contingent search warrant is one based on an adequate showing 'that all the requisites for a valid search will ripen at a specified future time or upon the occurrence of a specified event . . . .' [Citations.] Execution of an anticipatory

warrant therefore depends upon the occurrence of some future event; it may not be served until satisfaction of a condition precedent. [Citation.]" (*People v. Sousa* (1993) 18 Cal.App.4th 549, 557.) Courts "have repeatedly upheld anticipatory warrants based on the expected delivery of contraband to the place to be searched. [Citations.]" (*Ibid*.) Anticipatory warrant cases hold that "a warrant may issue on a clear showing that the police's right to search at a certain location for particular evidence of a crime will exist within a reasonable time in the future. [Citations.]" (*Id*. at p. 558.)

In *United States v. Grubbs* (2006) 547 U.S. 90 [126 S.Ct. 1494] (*Grubbs*), the Supreme Court rejected the contention that anticipatory warrants are unconstitutional. (*Id*. at pp. __ - __ [126 S.Ct. at pp. 1498-1501].) *Grubbs* stated: "Most anticipatory warrants subject their execution to some condition precedent other than the mere passage of time--a so-called 'triggering condition.' . . . [B]y definition, the triggering condition which establishes probable cause has not yet been satisfied when the warrant is issued." (*Id*. at p. __ [126 S.Ct. at pp. 1498-1499].) *Grubbs* set forth certain requirements for the validity of anticipatory warrants:

> "[Anticipatory warrants] require the magistrate to determine (1) that it is *now probable* that (2) contraband, evidence of a crime, or a fugitive *will be* on the described premises (3) when the warrant is executed. It should be noted, however, that where the anticipatory warrant places a condition (other than the mere passage of time) upon its execution, the first of these determinations goes not merely to what will probably be found *if* the condition is met. . . . Rather, the probability determination for a conditioned anticipatory warrant looks also to the likelihood that the condition will occur, and thus that a proper object of seizure will be on the described premises. In other words, for a conditioned anticipatory warrant to comply with the Fourth Amendment's requirement of probable cause, two prerequisites of probability must be satisfied. It must be true not

> only that *if* the triggering condition occurs 'there is a fair probability that contraband or evidence of a crime will be found in a particular place,' [citation], but also that there is probable cause to believe the triggering condition *will occur*. The supporting affidavit must provide the magistrate with sufficient information to evaluate both aspects of the probable-cause determination. [Citation.]" (*Id*. at pp. __ - __ [126 S.Ct. at p. 1500].)

*Grubbs* also concluded the Fourth Amendment did not require the triggering condition be specified in the search warrant, stating the Fourth Amendment "specifies only two matters that must be 'particularly describ[ed]' in the warrant: 'the place to be searched' and 'the persons or things to be seized.' " (*Id*. at p. __ [126 S.Ct. at p. 1500.) It concluded the Fourth Amendment's "particularity requirement does not include the conditions precedent to execution of the warrant [i.e., a triggering condition]." (*Id*. at p. __ [126 S.Ct. at p. 1501].)

B

Reyes asserts the Warrant was an anticipatory warrant with a triggering condition that she visit the Prison on July 3, 2004. She argues that because she did not visit the Prison until July 11, the Warrant's triggering condition was unsatisfied and therefore the evidence seized pursuant to the Warrant must be suppressed.

However, the Warrant does not specifically state that it must be executed on July 3, 2004. Rather, it simply specifies the persons (i.e., Reyes and persons accompanying her) and place (i.e., any vehicle in which Reyes arrives on the Prison's grounds) to be searched and the items expected to be found and seized during the search (e.g., heroin, balloons, condoms, etc.). Therefore, the Warrant's express terms do not require it be executed on July 3. Although Reyes argues the Warrant implicitly requires

it to be executed on July 3 because the Affidavit refers to that date, we disagree with Reyes's proffered interpretation of the Affidavit. She apparently relies on the following language in the Affidavit:

> "Based on various outgoing telephone calls, ISU has intercepted information utilizing the inmate Monitoring Automated Recording System. It was determined that Calderon has organized a conspiracy to introduce narcotics into the [Prison] with the assistance of his outside contacts and utilizing Antimo's approved visitor/wife, Susan Rios Reyes. *This visit is planned for Saturday, July 3, 2004*." (Italics added.)

She also cites the substance of Calderon's telephone conversations with Sean on July 2 to show the urgency of Calderon's need for delivery of the drugs. Because of the urgency of Calderon's need and the Affidavit's express reference to the planned visit on July 3, Reyes argues July 3 was the *only* date on which probable cause could have existed for the Warrant and thereafter there could be no probable cause for a search. She argues: "In this case, the [A]ffidavit stated the contraband would be with [Reyes], or her companion, on July 3, 2004."

However, the record does not support Reyes's assertion. The Affidavit did *not* state the drugs necessarily *would* be with Reyes (or her companion) on July 3. Rather, it stated Reyes's visit to the Prison was *planned* for July 3. A planned event or occurrence may or may not occur on its expected date. Given the complex sequence of events preliminary to Reyes's planned visit to the Prison, a magistrate could reasonably conclude the planned visit for July 3 (the day after the Warrant was issued) could very well be delayed until those preliminary events occurred. Based on Calderon's telephone conversations with Sean described in the Affidavit, Sean had to go to the home of

Calderon's grandmother and persuade her to go with him to the bank and loan him $700. Sean then had to locate a supplier from whom he could purchase the replacement heroin. He then had to meet Reyes and deliver that heroin to her. Reyes, in turn, had to arrange her schedule to drive from the Los Angeles area to Imperial County and arrive at the Prison before 2:00 p.m. on a Saturday, Sunday, or holiday (during established visitation hours). Because any or all of those events could have been delayed, causing Reyes to postpone her planned July 3 visit to the Prison, in the circumstances of this case we cannot conclude probable cause existed only on July 3.

Rather, at the time of issuance of the Warrant on July 2, a reasonable magistrate could have concluded it was likely probable cause would exist at the time Reyes actually arrived at the Prison in an attempt to visit Antimo. Although July 3 was the anticipated or "planned" date of her visit, considering all of the events preliminary to that visit, a magistrate could conclude her actual arrival at the Prison was likely to be on July 3 *or any subsequent date* within 10 days after issuance of the Warrant (i.e., up until July 12). Because July 3, 2004, was a Saturday, were Reyes not to receive the heroin and car from Sean in sufficient time to travel to Imperial County that weekend, she presumably would (and apparently did) have to wait until the following weekend during the next block of visitation days (e.g., July 11, 2004) to attempt her delivery of the heroin to Antimo. Calderon's expressed urgent need for the heroin did not require its delivery, if at all, on July 3. The Affidavit did *not* state July 3 was the *only date* on which Reyes could be expected to arrive at the Prison to attempt the delivery.

Probable cause to search Reyes existed on her arrival at the Prison at any time within 10 days after July 2, 2004. In the language of *Grubbs*, the "triggering condition" in this case was Reyes's arrival at the Prison in an attempt to visit Antimo. Furthermore, at the time the Warrant was issued on July 2, it was "true not only that *if* the triggering condition occur[red] 'there [was] a fair probability that contraband or evidence of a crime [would] be found in a particular place,' [citation], but also that there [was] probable cause to believe the triggering condition [*would*] *occur*." (*Grubbs, supra*, 547 U.S. at p. __ [126 S.Ct. at p. 1500].) Because Reyes arrived at the Prison on July 11, the "triggering condition" of the anticipatory Warrant was satisfied, probable cause existed, and the Warrant was therefore validly executed on that date.

III

*Other Contentions Regarding Lack of Probable Cause*

Reyes contends the Affidavit did not establish probable cause because it did not show a connection between her or her husband to the criminal activity of other persons (i.e., Calderon and Sean). She asserts the Affidavit's statement that the ISU was "conducting an ongoing investigation" regarding possible drug trafficking by Calderon and Antimo in "Facility A" of the Prison was conclusory and insufficient to support a probable cause finding for issuance of the Warrant. She argues the Affidavit's absence of detailed information regarding that investigation and Antimo's or her connection to Calderon and Sean precluded a finding of probable cause to issue a search warrant to search her.

However, Reyes does not cite, and we are not aware of, any case holding that the details of an investigation must be set forth in a warrant affidavit to establish probable cause. We believe a blanket requirement that details of an investigation be disclosed in a warrant affidavit could be both unnecessarily time-consuming in exigent cases and counterproductive because it might disclose investigative techniques or confidential information that could hinder the current or future investigations. We do not believe a warrant affidavit must disclose investigation details. Rather, we consider the totality of the circumstances in determining whether there was probable cause for issuance of a search warrant (i.e., there is a fair probability the place to be searched contains the contraband or evidence of a crime). (*Illinois v. Gates* (1983) 462 U.S. 213, 238.) Probable cause is "by nature a fluid concept incapable of ' "finely-tuned standards," ' [and] is said to exist 'where the known facts and circumstances are sufficient to warrant a [person] of reasonable prudence in the belief that contraband or evidence of a crime will be found' [citation]." (*People v. Hunter* (2005) 133 Cal.App.4th 371, 378.)

In the circumstances of this case, we conclude the magistrate reasonably relied on Rosas's sworn statements in the Affidavit regarding the ongoing investigation involving Calderon and Antimo. The Affidavit's description of the two July 2, 2004 telephone conversations between Calderon and Sean, in which "Susan" was mentioned as the person to receive the drugs and smuggle them into the Prison, was sufficient to support a reasonable inference that Rosas's identification of Reyes as that person was based on sound investigative techniques and conclusions (e.g., a check of the Prison's list of "approved" visitors for inmates Calderon and Antimo may have showed Reyes, Antimo's

wife, was the only "Susan" and thus the likely smuggler). The Affidavit was not required to state information showing Reyes's involvement in smuggling, a prior criminal history, or contact with Calderon or Sean. We conclude, based on the totality of the circumstances set forth in the Affidavit, there was probable cause to issue the Warrant. (*Illinois v. Gates*, *supra*, 462 U.S. at p. 238; *People v. Hunter*, *supra*, 133 Cal.App.4th at p. 378.) Therefore, the trial court properly denied Reyes's motion to traverse the Affidavit, quash the Warrant, and suppress the evidence seized from Reyes during the search.

IV

*Good Faith Exception to Probable Cause*

Assuming arguendo probable cause did not exist for issuance of the Warrant, we nevertheless would conclude the officers executed the Warrant in good faith and therefore the evidence seized from Reyes need not be suppressed.

A

"Evidence seized pursuant to a warrant unsupported by probable cause need not necessarily be excluded. The Fourth Amendment exclusionary rule does not bar the use in the prosecution's case-in-chief of evidence obtained by officers acting in reasonable reliance on a search warrant issued by a detached and neutral magistrate but ultimately found to be unsupported by probable cause. [Citations.]" (*People v. Lim* (2000) 85 Cal.App.4th 1289, 1296.) In *United States v. Leon* (1984) 468 U.S. 897, the Supreme Court concluded "the marginal or nonexistent benefits produced by suppressing evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant

cannot justify the substantial costs of exclusion." (*Id*. at p. 922.) Accordingly, the court held the exclusionary rule should not be applied when the officer conducting a search acted in objectively reasonable reliance on a warrant issued by a detached and neutral magistrate, which warrant is subsequently determined to be invalid. (*Id*. at pp. 922-923.) In considering that question, we apply the objective test of "whether a reasonably well trained officer would have known that the search was illegal despite the magistrate's authorization." (*Id*. at p. 922, fn. 23.)

However, "[t]here are four situations in which reliance would not be established and suppression [of evidence] would remain an appropriate remedy: (1) the issuing magistrate was misled by information that the officer [i.e., affiant] knew or should have known was false; (2) the magistrate wholly abandoned his or her judicial role; (3) the affidavit was so lacking in indicia of probable cause that it would be entirely unreasonable for an officer to believe such cause existed; and (4) the warrant was so facially deficient that the executing officer could not reasonably presume it to be valid. [Citations.]" (*People v. Lim*, *supra*, 85 Cal.App.4th at p. 1296.) Regarding the first situation, the determination whether a well-trained officer could have reasonably relied on a warrant may be affected by whether the officer's affidavit contained any misstatements or omissions. (*People v. Maestas* (1988) 204 Cal.App.3d 1208, 1216.) Regarding the third situation, "the objective reasonableness of an officer's decision to apply for a warrant must be judged based on the affidavit and the evidence of probable cause contained therein and known to the officer, 'and without consideration of the fact that the magistrate accepted the affidavit.' [Citation.]" (*People v. Camarella* (1991) 54

Cal.3d 592, 605.) Therefore, if the officer "would not reasonably have known that the affidavit (and any other supporting evidence) failed to establish probable cause, there is no reason to apply the exclusionary rule, because there has been no objectively unreasonable police conduct requiring deterrence. [Citation.]" (*Id*. at p. 606.) "The government has the burden of establishing objectively reasonable reliance. [Citation.]" (*People v. Lim*, *supra*, at p. 1297.)

B

Assuming arguendo there was no probable cause to issue the Warrant, we conclude that a reasonably well-trained officer in the circumstances of this case would *not* have known the Affidavit was so lacking in indicia of probable cause that it would be entirely unreasonable for that officer to believe the warrant was invalid. (*People v. Lim*, *supra*, 85 Cal.App.4th at p. 1296.) Although Reyes argues the Affidavit misstated that she was (or would be) an "approved" visitor on July 3, 2004, we rejected that proffered interpretation of the Affidavit in part I, *ante*. In any event, to the extent that description of Reyes was inaccurate because of the suspension of her visitation privileges on July 2, we nevertheless conclude a well-trained officer could not have reasonably believed probable cause was lacking for the Warrant because of that inaccuracy. First, we doubt that inaccuracy was, in fact, material and precluded the existence of probable cause. Second, even if that inaccuracy precluded the existence of probable cause, a well-trained officer could not be expected to know the intricacies of the law and therefore it would *not* be entirely unreasonable for that officer to believe probable cause existed in the circumstances of this case. Regardless of Reyes's status as an "approved" visitor on

July 3 (or July 11 on execution of the Warrant), an officer could have reasonably believed that, based on the ISU investigation and the two July 2 telephone calls between Calderon and Sean, Reyes would appear at the Prison in attempt to see Antimo and deliver drugs to him (regardless of whether she was an "approved" visitor) and therefore there was probable cause to search her. Finally, although Reyes also appears to argue the Warrant (or Affidavit) was so facially deficient that an officer could not reasonably presume it to be valid, her argument is conclusory and unsupported by any analysis or showing of a deficiency in the Warrant or Affidavit. Accordingly, assuming arguendo probable cause for issuance of the Warrant did not exist, we nevertheless conclude *Leon*'s good faith exception to the exclusionary rule would apply to allow admission of the evidence seized during the search of Reyes pursuant to the Warrant. (*United States v. Leon, supra,* 468 U.S. at pp. 922-923.)

DISPOSITION

The judgment is affirmed.

McDONALD, J.

WE CONCUR:

HALLER, Acting P. J.

IRION, J.